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In the Supreme Court of the United States
OCTOBER TERM, 1971

MELVIN LAIRD, Secretary of Defense, ROBERT SEAMANS, JR., Secretary of Air Force, and UNITED STATES OF AMERICA, PETITIONERS

v.

**JIM NICK NELMS, LETTIE BAKER NELMS
and LONNIE RAY NELMS**

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT**

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PETITION FOR A WRIT OF CERTIORARI TO THE
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THE FOURTH CIRCUIT

The Solicitor General, on behalf of Melvin Laird, Robert Seamans, Jr., and the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*) is reported at 442 F. 2d 1163. The order of the district court (App. B, *infra*) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on May 28, 1971. On August 18, 1971, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including October 25, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Federal Tort Claims Act subjects the United States to liability without fault, on the basis of state law imposing absolute liability for ultrahazardous activities.

2. Whether a claim under the Federal Tort Claims Act for damages resulting from sonic booms created by Air Force aircraft on an authorized training mission is barred by the discretionary function exception to the Act.

STATUTE AND REGULATION INVOLVED

The Federal Tort Claims Act provides in pertinent part:

28 U.S.C. 1346(b):

Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of prop-

erty, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. 2680(a):

The provisions of this chapter and section 1346(b) of this title shall not apply to—

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

Air Force Regulation 55-34 is set forth in App. C, *infra*.

STATEMENT

This action was brought against the United States¹ under the Federal Tort Claims Act (28 U.S.C. 1346 (b), 2671, *et seq.*) to recover damages allegedly caused to respondents' home by sonic booms created

¹The suit was originally brought against Melvin Laird, the Secretary of Defense, and Robert Seamans, Jr., the Secretary of the Air Force. The district court permitted the plaintiffs to amend the complaint to add the United States as a party defendant (R. 36, 38). ("R." refers to the record in the court of appeals.)

by United States Air Force aircraft. The district court granted the government's motion for summary judgment on the ground that the claims were barred by the discretionary function exception to the Act (28 U.S.C. 2680(a)). The court of appeals reversed, holding that the discretionary function exception was inapplicable and that the government was absolutely liable without fault by reason of state law imposing such liability for ultrahazardous activities.

Respondents alleged in their complaint (R. 8, 38) that sonic booms created by Air Force planes "on several occasions" had caused masonry cracks and other damage to their home and storage unit, located in Nashville, North Carolina, that would necessitate complete rebuilding of both structures at a cost of \$16,000. They identified one sonic boom occurring at approximately 2:30 p.m. on November 14, 1968, as having caused the "worst" damage. Their complaint was supported by affidavits concerning the occurrence of the sonic booms, including that of November 14, and the claimed damages to respondents' home (R. 54-67). There were no allegations that the Air Force was negligent in any way in conducting the flights or creating the sonic booms.

The government filed a motion for summary judgment and supporting affidavits. The affidavits (R. 27-30) indicated that a military aircraft had flown at supersonic speeds in the Nashville, North Carolina, area at approximately 2:30 p.m. on November 14, 1968. The aircraft (an Air Force SR-71) was attached to the 9th Strategic Reconnaissance Wing of the Strategic Air Command, stationed at Beale

Air Force Base, California. The Wing's responsibilities included making periodic high level supersonic training flights (denominated as combat crew training missions), in accordance with predetermined flight plans.

The Commander in Chief of the Strategic Air Command stated (R. 27) that he had "directed the operational training of air crews by supersonic flights in the SR-71 aircraft," and that the flight on November 14, 1968, "was authorized by and conducted pursuant to such direction." He indicated that the training of personnel and testing of equipment, including supersonic combat crew training missions over land areas of the United States, was essential to the carrying out of his responsibilities for the nation's air defense. The training missions were to be flown, however, "under controls designed to minimize disturbances on the ground, and these controls include prescribed altitudes, routes, and speeds."

The Wing Commander stated (R. 30) that the flight to the Nashville vicinity on November 14 was a combat crew training mission undertaken pursuant to "the direction of the Commander in Chief, Strategic Air Command." He also stated, and the plane's pilot confirmed (R. 29), that the flight was on course as prescribed by the mission flight plan during the passage over the Nashville area.

Respondents did not controvert the government's affidavits. The district court held that respondents' claims were barred by the discretionary function exception to the Federal Tort Claims Act and accord-

ingly granted the government's motion for summary judgment (App. B, *infra*, pp. 29-30).

The court of appeals reversed (App. A, *infra*, pp. 17-28). It held that the discretionary function exception to the Act was inapplicable on the ground that while the flight itself was discretionary, Air Force Regulations² "placed the government employees under a mandate that gave them no discretion with regard to the protection they were required to afford the public" (*id.*, p. 22). It relied on the statement in the regulations (App. C, *infra*, pp. 35-36) that "When a civilian area has been affected by Air Force aircraft, the Air Force must accept responsibility for restitution and payment of just claims", which it interpreted as "requir[ing] the Air Force to accept responsibility for restitution without qualification and pay all just claims" (App. A, *infra*, p. 21). With respect to the merits of respondents' claim, the court noted that respondents were relying on "the doctrine of strict liability" since they could not show "negligence either in the planning or operation of the flight" (*id.* at 24). On the authority of its prior decision in *United States v. Praylou*, 208 F. 2d 291, certiorari denied, 347 U.S. 934, the court held that the government could be subjected to absolute liability under the Act, where, as here, state law imposed such liability because the activity undertaken (in this case, the supersonic flights) was ultrahazardous. It remanded the case

² See Air Force Regulation 55-34 (App. C, *infra*), which establishes standards and procedures for supersonic flights.

to the district court for trial to determine causation and the extent of the damage.³

REASONS FOR GRANTING THE WRIT

This case presents important issues concerning the scope and nature of the government's liability under the Federal Tort Claims Act. The court below decided two questions in conflict with principles repeatedly enunciated by this Court and the other courts of appeals. Its holding that the Act sanctions recovery from the government without a showing of fault is directly contrary to this Court's admonition in *Dalehite v. United States*, that liability under the Act "does not arise by virtue either of United States ownership of an 'inherently dangerous commodity' or property, or of engaging in an 'extra-hazardous' activity" (346 U.S. 15, 45). The court's construction of the Act's discretionary function exception also runs counter to the teaching of *Dalehite* that the Act does not subject the government to liability for "decisions * * * responsibly made at a planning rather than an operational level" (*id.* at 42), and is in conflict with the decision of the Court of Appeals for the Ninth Circuit in *Maynard v. United States*, 430 F. 2d 1264. Both issues are of far-reaching significance, in view of the large number of supersonic flights engaged in by Air Force aircraft and the many additional gov-

³ The court directed that on remand respondents be permitted to amend their complaint to plead more specifically that they were entitled by reason of the flights to just compensation under the Fifth Amendment (App. A, *infra*, p. 28).

ernmental activities that might be deemed "ultra-hazardous," and warrant review by this Court.

1. Consideration of questions concerning governmental liability for injuries arising out of its undertakings begins with "the accepted jurisprudential principle that no action lies against the United States unless the legislature has authorized it." *Dalehite*, *supra*, 346 U.S. at 30. In the Federal Tort Claims Act Congress has made the government liable only for injuries "caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. 1346(b).

On the basis of this language limiting liability to injuries resulting from a "negligent or wrongful act or omission," the Court in *Dalehite* declined to subject the United States to liability without fault (346 U.S. at 44-45):

* * * [T]here is yet to be disposed of some slight residue of theory of absolute liability without fault. This is reflected both in the District Court's finding that the FGAN [fertilizer] constituted a nuisance, and in the contention of petitioners here. We agree with the six judges of the Court of Appeals, 197 F. 2d 771, 776, 781, 786, that the Act does not extend to such situations, though of course well known in tort law generally. It is to be invoked only on a "negligent or wrongful act or omission" of an employee. Absolute liability, of course, arises irrespective of how the tortfeasor conducts him-

self; it is imposed automatically when any damages are sustained as a result of the decision to engage in the dangerous activity. The degree of care used in performing the activity is irrelevant to the application of that doctrine. But the statute requires a negligent act. So it is our judgment that liability does not arise by virtue either of United States ownership of an "inherently dangerous commodity" or property, or of engaging in an "extra-hazardous" activity.

* * *

In *Dalehite*, the Court also rejected the argument that acts for which state law imposed liability without fault were "wrongful" within the meaning of the Act (346 U.S. at 45):

Petitioners rely on the word "wrongful" though as showing that something in addition to negligence is covered. This argument, as we have pointed out, does not override the fact that the Act does require some brand of misfeasance or nonfeasance, and so could not extend to liability without fault; in addition, the legislative history of the word indicates clearly that it was not added to the jurisdictional grant with any overtones of the absolute liability theory. Rather, Committee discussion indicates that it had a much narrower inspiration: "trespasses" which might not be considered strictly negligent. Hearings before a Subcommittee of the Senate Committee on the Judiciary on S. 2690, 76th Cong., 3d Sess. 43-44. Had an absolute liability theory been intended to have been injected into the Act, much more suitable models could have been found, see *e.g.*, the Suits in Admiralty Act, 41 Stat. 525, 46 U.S.C. §§ 742-743, in regard to maintenance and cure. * * *

While the dissenting opinion in *Dalehite* (346 U.S. 47-60) disagreed with all other aspects of the majority decision, it did not take issue with the ruling that absolute liability is not a basis for a Tort Claims Act recovery.⁴ Nor has that ruling been disturbed by this Court's later decisions under the Act.⁵

⁴ *Dalehite* disposes of the two grounds upon which the Fourth Circuit relied in its prior decision in *United States v. Praylou*, 208 F. 2d 291, certiorari denied, 347 U.S. 934, which it followed in the present case (App. A, *infra*, p. 25).

1) In *Praylou*, the court distinguished "between possession of dangerous property," the point argued in *Dalehite*, and the operation of a dangerous instrument that was involved there (208 F. 2d at 295). *Dalehite* stated, however, that liability under the Tort Claims Act cannot be imposed "by virtue either of" the government's ownership of an inherently dangerous commodity or property "or of engaging in" an extra-hazardous activity (346 U.S. at 45).

2) The court in *Praylou* also concluded that the Tort Claims Act permits recovery on an absolute liability theory because "the effect of the [state law imposing absolute liability] * * * is to make the infliction of injury or damages by the operation of an airplane [the extra-hazardous instrument involved] of itself a *wrongful act* giving rise to liability" (208 F. 2d at 293; emphasis supplied). But in *Dalehite* the Court rejected the theory that the word "wrongful" in the Tort Claims Act covers absolute liability (346 U.S. at 45).

The Court's denial of certiorari in *Praylou* may have reflected its view that the basis of liability in that case was in fact negligence. In their brief in opposition in *Praylou*, the respondents asserted that "[n]egligence was an issue" in the case, under the doctrine of *res ipsa loquitur* (Brief in Opposition, *United States v. Praylou*, No. 568, O.T., 1953, pp. 2, 6-7).

⁵ Those decisions, while not directly involving the question whether the doctrine of strict liability applies under the Act, have continued to emphasize that it permits recovery

Every other court of appeals that has considered this issue similarly has held that the Act does not sanction recovery based on the doctrine of strict liability. See, e.g., *United States v. Hull*, 195 F. 2d 64, 67 (C.A. 1); *Heale v. United States*, 207 F. 2d 414 (C.A. 3); *Emelwon v. United States*, 391 F. 2d 9, 10 (C.A. 5), certiorari denied, 393 U.S. 841; *United States v. Taylor*, 236 F. 2d 649, 652-653 (C.A. 6), petition for certiorari dismissed, 355 U.S. 801; *Wright v. United States*, 404 F. 2d 244, 246 (C.A. 7); *Bartholomae Corp. v. United States*, 253 F. 2d 716, 718 (C.A. 9); *United States v. Page*, 350 F. 2d 28, 33 (C.A. 10), certiorari denied, 382 U.S. 979.

2. The court's holding that the claim made here was not barred by the discretionary function exception to the Act (28 U.S.C. 2680(a)) is contrary to the controlling principles announced in *Dalehite* and conflicts with *Maynard v. United States*, 430 F. 2d 1264 (C.A. 9).

a. Section 2680(a) excepts from the Act's authorization to sue the government "Any claim * * * based upon the exercise or performance or the failure to

against the government only for *negligent* conduct. E.g., *Indian Towing Company v. United States*, 350 U.S. 61, 68-69; *United States v. Muniz*, 374 U.S. 150, 165-166. In *Hatahley v. United States*, the Court reiterated that the statute's use of the word "wrongful" was intended merely "to include [recovery for] situations * * * involving 'trespasses' which might not be considered strictly negligent" (351 U.S. 173, 181). Neither *Indian Towing* nor the later decision in *Rayonier, Inc. v. United States*, 352 U.S. 315, in which the Court rejected the notion that the Act excluded conduct performed in a uniquely governmental capacity, involved or discussed the strict liability doctrine or its place under the Act.

exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused." In *Dalehite* the Court, in rejecting the contention that the government was liable for alleged negligence by its officials in connection with the Texas City fertilizer explosion, held that certain acts charged as negligence—the claims that the government "had been careless in drafting and adopting" the fertilizer plan as a whole, had committed "specific negligence in various phases of the manufacturing process," and was guilty of "official dereliction of duty in failing to police" the loading of the fertilizer for shipment (346 U.S. at 23-24)—were within the discretionary function exception. This was so, the Court stated, because the official decisions with respect thereto "were all responsibly made at a planning rather than operational level and involved considerations more or less important to the practicability of the Government's fertilizer program" (*id.* at 42). While the Court found it "unnecessary to define, apart from this case, precisely where discretion ends," since the exception applied to all the acts in issue, it elaborated as follows (346 U.S. at 35-36):

It is enough to hold, as we do, that the "discretionary function or duty" that cannot form a basis for suit under the Tort Claims Act includes more than the initiation of programs and activities. It also includes determinations made by executives or administrators in establishing plans, specifications or schedules of operations.

Where there is room for policy judgment and decision there is discretion. It necessarily follows that acts of subordinates in carrying out the operations of government in accordance with official directions cannot be actionable. If it were not so, the protection of § 2680(a) would fail at the time it would be needed, that is, when a subordinate performs or fails to perform a causal step, each action or nonaction being directed by the superior, exercising, perhaps abusing, discretion.

The Court's reasoning is equally applicable to the governmental decisions involved here. While respondents' complaint does not allege specific acts of negligence, there are only three levels at which official misfeasance could have occurred—the general authorization of supersonic combat crew training missions over land areas, the authorization and planning of the specific flight on November 14 over the Nashville area, and the carrying out of that flight. The first was ordered by the Commander-in-Chief of the Strategic Air Command, the second by the Wing commander; both of these obviously involved high-level "executives or administrators in establishing plans, specifications or schedules of operations," who were exercising "policy judgment and decision." Under the test of *Dalehite*, their decisions "were all responsibly made at a planning rather than an operational level." Though the third level, the flight itself, might be deemed "operational," the pilot's affidavit (R. 29) shows that the flight "was made in strict accordance with directions given to me regarding route, speed and altitude," so that the acts at this level, like some

of the decisions in *Dalehite*, were "of subordinates in carrying out the operations of government in accordance with official directions" and thus "cannot be actionable" (346 U.S. at 36). In short, here, just as in *Dalehite*, "[a]n analysis of Section 2680(a) * * * emphasizes the congressional purpose to except the acts here charged as negligence from the [Act's] authorization to sue" (346 U.S. at 32).

b. The Court of Appeals for the Ninth Circuit in *Maynard* held that the discretionary function exception applied on facts almost on all fours with the present case. That was a Tort Claims Act suit for injuries sustained as a result of a sonic boom created by an Air Force plane. The district court granted a government motion for summary judgment, supported by affidavits showing that the boom resulted from a duly authorized and properly conducted supersonic training flight. The court of appeals affirmed *per curiam* on the authority of *Dalehite*.^{*}

^{*} Several district courts have reached this same result in cases involving government-created sonic booms. *E.g.*, *Ward v. United States*, Civ. No. 67-440, W.D. Pa., decided September 17, 1971 (explicitly refusing to follow the decision by the court below); *Huslander v. United States*, 234 F. Supp. 1004 (W.D. N.Y.); *Schwartz v. United States*, 38 F.R.D. 164 (D. N.D.); *McMurray v. United States*, 286 F. Supp. 701 (W.D. Mo.). Cf. *Goddard v. District of Columbia Redevelop. Land Agency*, 287 F. 2d 343 (C.A.D.C.), certiorari denied, 366 U.S. 910 (housing redevelopment); *Blaber v. United States*, 332 F. 2d 629 (C.A. 2) (Atomic Energy Commission safety regulations for handling atomic materials); *Mahler v. United States*, 306 F. 2d 713 (C.A. 3), certiorari denied, 371 U.S. 923 (grant-in-aid highways); *Daniel v. United States*, 426 F. 2d 281 (C.A. 5) (grant-in-aid highways); *Sickman v. United States*, 184 F. 2d 616

c. While the court below recognized that "the Commander-in-Chief of the Strategic Air Command exercised a discretionary function in ordering supersonic training missions over land areas," it concluded that "the discretion of the Commander-in-Chief * * * and of his subordinates who planned the operating details of this specific flight * * * was restricted by Air Force Regulation 55-34" (App. A, *infra*, p. 19). In the court's view, that regulation imposed, in effect, an absolute duty on the Air Force to protect the public from sonic boom damages, either by preventing them or by accepting the responsibility therefor "without qualification" (*id.* at p. 21).

As the court of appeals recognized, however, the government, with full awareness of the possible damages that sonic booms might cause, made a high level policy decision to undertake supersonic combat crew training missions—a decision for which it was immune from liability under the discretionary function exception. All the subsequent decisions made in carrying out the flights were based upon and in accordance with that basic policy determination and, under *Dalehite* (346 U.S. at 36), "cannot be actionable." The statement in Regulation 55-34 that "the Air

(C.A. 7), certiorari denied, 341 U.S. 939 (preservation of migratory birds); *Coates v. United States*, 181 F. 2d 816 (C.A. 8) (Missouri River flood control project); *Builders Corp. of America v. United States*, 320 F. 2d 425 (C.A. 9), certiorari denied, 376 U.S. 906 (directives from an Army general regarding use of a civilian housing project and discretionary acts by a colonel in implementing them); *United States v. Gregory*, 300 F. 2d 11 (C.A. 10) (irrigation canals).

Force must accept responsibility" for sonic boom damages it causes neither changed the discretionary character of the decisions involved in making the flights nor authorized suit against the United States for such damages.

CONCLUSION

This case presents important issues in the administration of the Federal Tort Claims Act. The petition for a writ of certiorari should be granted.

Respectfully submitted.

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OCTOBER 1971.

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14,568

JIM NICK NELMS, LETTIE BAKER NELMS
and LONNIE RAY NELMS, APPELLANTS*—versus—*MELVIN LAIRD, Secretary of Defense and ROBERT
SEAMANS, JR., Secretary of Air Force, and UNITED
STATES OF AMERICA, APPELLEES

Appeal from the United States District Court for the
Eastern District of North Carolina, at Raleigh
John D. Larkins, Jr., District Judge.

(Argued March 3, 1971 Decided May 28, 1971)

Before HAYNSWORTH, Chief Judge, BOREMAN and
BUTZNER, Circuit Judges

BUTZNER, Circuit Judge:

To maintain its combat readiness, the United States Air Force regularly trains air crews in supersonic flight. Jim Nick Nelms, who lives in a rural community near Nashville, North Carolina claims military planes on a training mission from Beale Air Force Base in California caused sonic booms that

damaged his house so extensively the building is now beyond repair. After unsuccessfully seeking satisfaction from the Air Force, Nelms brought this suit for \$16,000 damages. The district court entered summary judgment for the government on the ground that supersonic flight training is a discretionary function within the meaning of the Federal Tort Claims Act [28 U.S.C. §§ 1346(b), 2671-2680]. We reverse.

I

The Air Force, while denying that it damaged Nelms house, conceded that a plane on a supersonic training flight caused a sonic boom near it on the day that he alleges the principal damage occurred. The Air Force contends, however, that notwithstanding the dispute over the effects of the sonic boom on Nelms' house, the discretionary function exception of the Federal Tort Claims Act releases it from any liability. To establish that supersonic flight training is a discretionary function, the Air Force relies on these uncontroverted facts: (a) the flight was authorized by the Commander-in-Chief of the Strategic Air Command in the exercise of his responsibility for the nation's air defense; (b) the specific flight plan was developed under the directions of the 9th Strategic Reconnaissance Wing according to Air Force Regulation 55-34; (c) the actual flight was conducted according to explicit directions regarding route, speed, and altitude from which the pilot did not deviate.

The Federal Tort Claims Act allows an action against the government for loss of property "caused by the negligence or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would

be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b). But the Act releases the government from tort liability for a claim "based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused." 28 U.S.C. § 2680(a). The discretionary function exception affords the government a defense "[w]here there is room for policy judgment and decision," *Dalehite v. United States*, 346 U.S. 15, 36 (1953), and not when its employees are under a duty imposed by law to perform a mandatory act. *Somerset Seafood Co. v. United States*, 193 F.2d 631, 635 (4th Cir. 1951). See also O. Reynolds, *The Discretionary Function Exception of the Tort Claims Act*, 57 Geo. L.J. 81, 91 (1968).

Undoubtedly the Commander-in-Chief of the Strategic Air Command exercised a discretionary function in ordering supersonic training missions over land areas of the United States. The defense needs of the nation and the degree of air crew competence required to meet those needs are precisely the kind of decision that the Congress intended should not be second-guessed in a tort action. See *Dalehite v. United States*, 346 U.S. 15, 30 (1953). But the discretion of the Commander-in-Chief who authorized the training program and of his subordinates who planned the operating details of this specific flight over North Carolina was restricted by Air Force Regulation 55-34.¹ The regulation directed them to

¹ Air Force Regulation No. 55-34 provides in part:

"3. Check List of Protective Measures. Commanders should use the check list below in planning the maximum protection for civilian communities. The measures

outlined should be used whenever feasible. Commanders are also urged to take any other action they consider advisable to carry out the purpose of this regulation.

. . . .

Sonic and Supersonic Flight

"Sonic and supersonic flights will be conducted at altitudes above 30,000 feet over land areas, and above 10,000 feet over water areas. Sonic booms will not be intentionally generated except:

"(1) During tactical missions which necessitate sonic or supersonic speeds;

"(2) During phases of formal training flights, which require sonic or supersonic speeds. When such flights are required, they will be conducted over specially designated areas under close supervision;

"(3) During research, test, and operational suitability test flights which require sonic or supersonic speeds; these flights must be conducted over areas designated for this purpose;

"(4) When authorized by a major air command for demonstration purposes, provided all such demonstrations are coordinated with HQ USAF (SAFOR) at least five work days in advance.

"(5) In an emergency when, in the judgment of the pilot, safety justifies a deviation from this general policy.

. . . .

"4. Sonic Boom Logs. The characteristics of the sonic boom phenomenon are such that damage may occur as a result. When a civilian area has been affected by Air Force aircraft, the Air Force must accept responsibility for restitution and payment of just claims. To assist in determining whether or not alleged claims are valid, all units which operate aircraft capable of supersonic flight will maintain an accurate record of all supersonic flights on AF Form 121, Sonic Boom Log.

"5. Sonic Boom Inquiry System. A computerized Central Sonic Boom Repository has been established

take detailed precautions in planning "maximum protection for civilian communities." AF Reg. 55-34 ¶ 3. Maximum, defined as "greatest in quantity or highest in degree attainable or attained," Webster's Third New International Dictionary (1964), must be given full effect in interpreting the regulation. That the regulation leaves no room for affording the public less protection is apparent from paragraph 4, which recognizes that despite all precautions, damage may result from sonic booms, and in that event, requires the Air Force to accept responsibility for restitution without qualification and pay all just claims.

The import of the regulation is similar to that of the Wreck Removal Acts [14 U.S.C. § 86; 33 U.S.C. §§ 409, 414] in *Somerset Seafood Co. v. United States*, 193 F.2d 631 (4th Cir. 1951). In that case, an oyster boat was stranded on the wreck of the old battleship TEXAS in Chesapeake Bay. The boat's owner brought suit under the Federal Torts Claim

at HQ USAF to maintain records of all Air Force and Air National Guard supersonic flight activity within the CONUS and facilitate the processing of inquiries and damage claims. . . .

. . . .

"10. Sonic Boom Complaints. Upon receipt of a damage complaint or claim within the continental limits of the United States, the Base Staff Judge Advocate will complete AF Form 128, 'Sonic Boom Inquiry,' and forward it to Data Automation which will enter the applicable Installation Code"

"11. Sonic Boom Inquiry Response. A Sonic Boom Inquiry response, obtained from the central computer, and containing information as to possible USAF activity causing the disturbance will be forwarded in duplicate to the inquiring officer by HQ USAF (AFJALD). The requesting Staff Judge Advocate will then replot the suspect supersonic flight paths to determine the possibility of Air Force involvement. . . ."

Act alleging that the government was negligent in creating and marking the wreck. Refusing to apply the discretionary function exception, we said:

“[T]he Wreck Acts effectively dispose of the contention that the United States is relieved of liability here because, under § 2680(a) of the Act, the Government is not liable for the breach of a discretionary duty and that the Government’s duty here to remove or mark the wreck was discretionary. As we read the Wreck Acts, the duty of the United States to mark or remove the wreck is mandatory. The appropriate federal agencies and officers decide merely the proper methods or measures.” 193 F.2d at 635.

The parallel to *Somerset* is instructive. The Air Force concedes that the sonic boom was caused by an aircraft flying 70,000 feet or more over Nashville at three times the speed of sound. By the laws of physics, a pressure wave producing a sonic boom was unavoidable. While the decision to fly over North Carolina at supersonic speeds was discretionary, the degree of protection to be afforded civilians within reach of the sonic boom was not. In *Somerset*, a law, here, a regulation, placed the government employees under a mandate that gave them no discretion with regard to the protection they were required to afford the public.

The government relies on several cases that relieve the Air Force of liability for sonic booms under the discretionary function exception of the Act.² These

² Maynard v. United States, 430 F.2d 1264 (9th Cir. 1970); M. Murray v. United States, 286 F.Supp. 701 (W.D. Mo. 1968); Schwartz v. United States, 38 F.R.D. 164 (D.N.D. 1965); Huslander v. United States, 234 F.Supp. 1004 (W.D. N.Y. 1964).

cases, in turn, rely on *Dalehite v. United States*, 346 U.S. 15 (1953), which dealt with the Texas City disaster of 1947. Nitrogen fertilizers, which the government permitted to be packaged and transported for export in an unsafe manner, caused a catastrophic explosion. The Supreme Court held that administrative decisions about packaging, labeling, testing, and transporting the fertilizer were discretionary and, therefore, not actionable. The Court applied the discretionary function exception to all of the government employees who made these decisions, not merely to those who authorized the export program. The administrative decisions, the Court said, "were all responsibly made at a planning rather than an operational level and involved considerations more or less important to the practicability of the Government's fertilizer program." 346 U.S. at 42. However, no aspect of these administrative decisions included assessment of the risk or even expectation of the possibility that the fertilizer would explode. Recognizing this, the Court indicated that the likelihood of harm was too remote to render the government liable:

"There must be knowledge of a danger, not merely possible, but probable,' *MacPherson v. Buick Motor Co.*, 217 NY 382, 389 111 NE 1050. . . . Here, nothing so startling was adduced. The entirety of the evidence compels the view that FGAN [fertilizer] was a material that former experience showed could be handled safely in the manner it was handled here. Even now no one has suggested that the ignition of FGAN was anything but a complex result of the interacting factors of mass, heat, pressure and composition." 346 U.S. at 42.

The unforeseeability of harm in the Texas City explosion contrasted with the likelihood of harm from

sonic booms raises a distinction so significant that *Dalehite* cannot be considered to control the case before us. By its reliance on the quoted language in *MacPherson*, the Court indicated that the exception is inapplicable when the government knows harm is probable. There is an obvious difference between the unencumbered right to make decisions for the general welfare and the unrestricted power to disregard predictable danger to the public at large. Here the release of a destructive force—a sonic boom—was deliberately planned, and the likelihood of harm to some civilians was known to exist despite all precautionary measures the planners could take. These factors, not found in *Dalehite*, make that case inapplicable.³ The inability to prevent a deliberately released destructive force from causing harm, it seems to us, provides an appropriate limit to the discretionary function exception.

II

Our holding that the exception is inapplicable does not, of course, render the Air Force liable. In order for Nelms to prevail, he must show that the damage to his property was caused by the negligent or wrongful act or omission of a government employee “under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.” 28 U.S.C. § 1346(b). Since Nelms has been unable to show negligence either in the planning or operation of the flight, he necessarily relies on the doctrine of strict liability for ultrahazardous activities.

³ Additionally, the employees, in *Dalehite* were not subject to a regulation comparable to AFR 55-34.

The Air Force again relies on *Dalehite v. United States*, 346 U.S. 15, 45 (1953), where the Court ruled that the government could not be held liable without fault even if the explosive fertilizer were a common law nuisance. But this circuit has held the government absolutely liable where state law imposes strict liability on private persons. *United States v. Praylou*, 208 F.2d 291 (4th Cir. 1953), *cert. denied*, 347 U.S. 934 (1954). In that case, Judge Parker distinguished between possession of a dangerous property, the point argued in *Dalehite*, and the operation of a dangerous instrument. 208 F.2d at 1295. *Praylou* has been cited by the Supreme Court in *Rayonier, Inc. v. United States*, 352 U.S. 315, 319 n.2 (1957), a case which admonishes that it is not a judicial function to read exemptions into the Tort Claims Act beyond those provided by Congress. *Praylou* is on point, and we see no reason to reconsider it. See also, *United States v. Pendergast*, 241 F.2d 687, 688 (4th Cir. 1957).

The Air Force's liability to Nelms depends, then, on whether under the laws of North Carolina a private person would be required to compensate him. The North Carolina Supreme Court has imposed the standard of strict liability with respect to concussion damage caused by blasting, *Guilford Realty & Ins. Co. v. Blythe Bros. Co.*, 260 N.C. 69, 131 S.E.2d 900 (1963). In adopting the majority view of blasting cases, the Court relied on the rule appearing in the Restatement of Torts §§ 519-20 that whoever engages in ultrahazardous activities is absolutely liable for resulting harm. Nevertheless, sonic booms cannot be classified as ultrahazardous solely on the authority of the blasting cases, for even though sonic booms apparently produce effects much the same as concussions accompanying an explosive blast, they cannot be

deemed ultrahazardous simply because the forces causing damage are comparable. Rather, if one who engages in supersonic flight is to be held strictly accountable, his action must on its own merit satisfy the criteria set out in § 520 of the Restatement:

"An activity is ultrahazardous if it (a) necessarily involves a risk of serious harm to the person, land or chattels of others which cannot be eliminated by the exercise of the utmost care, and (b) is not a matter of common usage."

In two respects, classifying supersonic flight as ultrahazardous presents no difficulty. First, as required by § 520(a), utmost care cannot presently eliminate sonic booms from supersonic flight; second, supersonic flight is not a matter of common usage, and the requirement of § 520(b) is readily met.

The seriousness of the risk of harm presents a more difficult analytical problem. North Carolina law no longer regards the mere operation of an aircraft as ultrahazardous.⁴ The risk of damage from sonic booms, however, is different in kind from the risk of damage from airplane crashes, forced landings, or

⁴ The North Carolina legislature, which adopted the Uniform Aerodynamics Act in 1929, repealed in 1947 § 5 of the Act, which makes "[t]he owner of every aircraft . . . absolutely liable for injuries to persons or property on the land . . . beneath." Laws of 1947, c. 1069 § 3, formerly N. C. Gen. Stat. § 63-14. Nevertheless, this action by the legislature has no bearing on the classification of supersonic flight because § 63-14 of the Act was adopted when sonic booms were unknown and repealed when experience with sonic booms was virtually nonexistent. We assume, therefore, that the legislature was not dealing with sonic booms and that the common law of North Carolina as set forth in *Guilford Realty & Ins. Co. v. Blythe Bros. Co.*, 260 N.C. 69, 131 S.E. 2d 900 (1963) is applicable.

the discharge of debris onto the land below—occurrences which gave aviation its early classification as an ultrahazardous activity.⁵ See Restatement of Torts § 520 com. b, d, e. The degree of risk inherent in subsonic flying depends on the likelihood that some part of the aircraft will come down in an unintended place. Here the issue is whether a force known to be a constant companion of supersonic flight is so uncontrollable that, on occasion, its strength will reach destructive proportions.

Normally, we would require that an evaluation of the seriousness of the risk created by supersonic flight be made largely on the basis of competent evidence introduced at trial. For even though the normal pressure distribution in a sonic boom is generally understood, variations in pressure due to meteorological phenomena and topological features apparently do occur.⁶ But in this case, we can rely on the Air Force's own assessment of the potential for harm from sonic booms. Air Force Regulation 55-34⁷ provides a satisfactory basis to meet the requirements of § 520 of the Restatement. In paragraph 3 it orders maximum protection to be afforded civilian communities. In paragraph 4 it says that damage may none-

⁵ The American Law Institute recommends that strict liability be imposed for ground damage from sonic booms. Restatement (Second) of Torts § 520, com. c and d (Tent. Draft No. 11, 1965); Restatement (Second) of Torts § 520A (Tent. Draft No. 12, 1966).

⁶ For a discussion of the characteristics and some of the effects of sonic booms, see *United States v. Gravelle*, 407 F.2d 964, (10th Cir. 1969); *Dabney v. United States*, 249 F.Supp. 599 (W.D.N.C. 1965); *Sonic Booms—Ground Damage—Theories of Recovery*, 32 J. Air L. & Com. 596, 603 (1966); 8 Am. Jur. 2d Aviation § 99 (1963).

⁷ See footnote 1, *supra*.

theless occur. The regulation, therefore, is a frank admission that the potential for destructiveness from sonic booms is a continual risk of supersonic flight. Since the Air Force is in the best position to affirm that, despite the utmost care, sonic booms pose a substantial risk to the property of others, it should not be permitted to prove otherwise.

III

Nelms also claims that he has a constitutional right to recovery because his property has been taken without just compensation. Nelms did not press his constitutional claim in the district court, though his complaint, broadly read, is sufficient to embrace it. The district judge understandingly dealt only with Nelms' cause of action under the Federal Tort Claims Act. Nelms' pleading and proof present a record too sketchy for initial consideration of this important constitutional question in an appellate court.

The summary judgment entered by the district court is vacated, and this case is remanded for trial. With regard to the cause of action based on the Federal Tort Claims Act, the sole issue to be tried is whether sonic booms damaged Nelms' home, and, if so, the extent of the damage. Nelms also should be allowed to amend his complaint to plead more specifically his cause of action based on the Fifth Amendment. On this issue, Nelms must establish that the damage, if any, to his home amounted to a taking of his property without just compensation.

Vacated and remanded.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
NORTH CAROLINA
WILSON DIVISION

No. 1127-Civil

JIM NICK NELMS, ET AL., PLAINTIFFS

v.

MELVIN LAIRD, ET AL., DEFENDANTS

[Filed Mar. 9, 1970, Samuel A. Howard, Clerk,
U. S. District Court, E. Dist. No. Car.]

ORDER

LARKINS, District Judge:

This cause coming before the Court upon the Defendants' Motion for Summary Judgment filed with appropriate affidavits pursuant to the provisions of Rule 56 of the Federal Rules of Civil Procedure; and, this Court, on December 4, 1969, having appointed Mr. Everette L. Wooten, Jr., Esq., of the Lenoir County Bar to assist the plaintiffs in preparing a further response to the Defendants' Motion for Summary Judgment; and it now appearing to the Court that, despite the cogent and convincing arguments of counsel, the identical question here presented was carefully considered by the United States District Court for the Western District of New York in the case of *Huslander v. United States*, 234 F. Supp. 1004 (W.D.N.Y., 1964); this Court must now hold, on the basis of the reasoning and analysis in that opinion, that the Plaintiffs in this action are barred

from any recovery because of the discretionary function exception to the Federal Tort Claims as set forth in 28 U.S.C.A. § 2680(a) and that the Defendants' motion must therefore be allowed.

NOW THEREFORE, in accordance with the foregoing, it is:

ORDERED that the Defendants' Motion for Summary Judgment be and the same hereby is allowed;

FURTHER ORDERED that this Court takes judicial notice that Mr. Wooten has ably represented the plaintiffs in this action, has complied with this Court's request and is therefore relieved of making any further efforts on their behalf unless private arrangements should be made between Mr. Wooten and the plaintiffs;

FURTHER ORDERED that a copy of this Order shall be served upon all counsel of record.

Let this ORDER be entered forthwith.

/s/ John D. Larkins, Jr.
JOHN D. LARKINS, JR.
United States District Judge

Trenton, North Carolina
March 6th, 1970

APPENDIX C

DEPARTMENT OF THE AIR FORCE
Washington, 6 October 1967

AIR FORCE REGULATION NO. 55-34

Operations

REDUCING FLIGHT DISTURBANCES THAT CAUSE
ADVERSE PUBLIC REACTIONS

This regulation outlines the practices established to minimize the disturbances of flight operations that cause public reaction. It furnishes the commander of all flying units with general guidance for dealing with local problems.

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1. *Importance of Good Community Relations.* A friendly relationship between the personnel of Air Force bases and civilians in neighboring communities is an important factor in maintaining a high degree of morale and efficiency. Public reaction to the annoyances caused by the operation of aircraft at bases close to residential areas has, in the past, injured

this relationship. In some instances it has created pressure to restrict operations. The increasing use of jet aircraft has made this problem even more serious.

2. Protection of Civilian Communities. Every Air Force base must strive to maintain the best possible relations with its neighboring civilian communities. Commanders must take every precaution to protect communities near Air Force bases from the annoyances and risks associated with flight operations. They should continually review existing traffic patterns, instrument approaches, weather minima, and operating practices. These factors should be evaluated in terms of the location of the base in relation to populated areas and other local situations.

3. Check List of Protective Measures. Commanders should use the check list below in planning the maximum protection for civilian communities. The measures outlined should be used whenever feasible. Commanders are also urged to take any other action they consider advisable to carry out the purpose of this regulation.

Preferential Runways

Minimum requirements for the use of a preferential runway system are:

- (1) Visual Flight Rules (VFR) must be in effect.
- (2) The wind is within 80 degrees of the runway heading with a velocity of 13 knots or less.
- (3) The wind is within 90 degrees of the runways with a velocity of five knots or less.
- (4) The runway is dry and clear.

- (5) There are no obstructions adjacent to the runway.
- (6) The individual pilot concurs.

Traffic Patterns

Should be established to avoid populated areas as much as possible.

Take-off Techniques

All aircraft, whether proceeding straight out or turning, should attain 1200 feet above the terrain as soon as possible.

Landing Techniques

Aircraft should join the traffic pattern at a minimum of at least 1200 feet above the terrain and should not descend below 1200 feet until turning on to base leg prior to starting final approach. Aircraft making a straight-in approach should maintain at least 1200 feet above the terrain for as long as practicable before starting normal descent on final approach.

Run-Up Pads

Should be located to minimize disturbance and risk of accident. Engine run-ups, other than pre-flight, should be completed in areas specifically authorized for that purpose and within established limitations, such as prescribed heading, maximum allowable power setting, etc. Blast fences and other protective devices should be used as much as practicable.

Engine Test Stands

Should be located to minimize disturbance. Hours of use may be regulated, if necessary.

Sonic and Supersonic Flights

Sonic and supersonic flights will be conducted at altitudes above 30,000 feet over land areas, and above 10,000 feet over water areas. Sonic booms will not be intentionally generated except:

- (1) during tactical missions which necessitate sonic or supersonic speeds;
- (2) during phases of formal training courses which require sonic or supersonic speeds. When such flights are required, they will be conducted over specially designated areas under close supervision;
- (3) during research, test, and operational suitability test flights which require sonic or supersonic speeds; these flights must be conducted over areas designated for this purpose;
- (4) when authorized by a major air command for demonstration purposes, provided all such demonstrations are coordinated with HQ USAF (SAFOI) at least 5 workdays in advance.
- (5) in an emergency when, in the judgment of the pilot, safety justifies a deviation from this general policy.

Chaff Dispensing

To preclude the potential hazards to life and property involved when "rope" elements of chaff are dropped over high voltage electric transmission lines, the following restrictions will be observed:

- (1) Chaff containing rope elements will not be dispensed during peace-time unless given special authorization by the major command headquarters having jurisdiction. Major

commands may authorize dispensing of rope-chaff for tests and tactics requirements and for research and development requirements. Dispensing of rope-chaff will not be authorized for routine training sorties or unit simulated combat missions.

- (2) Special permission is required from the RCAF before dispensing rope-chaff over Canada.
- (3) When special authority is granted, the organization concerned will take precautionary measures to insure that the rope-chaff falls on water areas or on land areas devoid of high voltage electric power transmission lines. Computation of "safe areas" for each sortie will consider the following:
 - (a) The geographical features of the area over which rope-chaff is to be dispensed.
 - (b) The effect winds aloft will have on the rope-chaff during the time it descends from the dispensed altitude to the surface.
 - (c) The rate of fall of rope-chaff.
 - (d) Allowances required to compensate for possible errors in computing "safe areas."
- (4) Final responsibility for dispensing rope-chaff during peacetime rests with the aircraft commander, who will insure that the chaff is not dispensed from his aircraft unless the above provisions are met.

4. *Sonic Boom Logs.* The characteristics of the sonic boom phenomenon are such that damage may occur as a result. When a civilian area has been affected by Air Force aircraft, the Air Force must accept re-

sponsibility for restitution and payment of just claims. To assist in determining whether or not alleged claims are valid, all units which operate aircraft capable of supersonic flight will maintain an accurate record of all supersonic flights on AF Form 121, Sonic Boom Log.

5. *Sonic Boom Inquiry System.* A computerized Central Sonic Boom Repository has been established at HQ USAF to maintain records of all Air Force and Air National Guard supersonic flight activity within the CONUS and facilitate the processing of inquiries and damage claims. Base Commanders and Commanders of Air National Guard units within the CONUS are responsible that AF Forms 121 are consolidated and keypunched and that verified data as of 2400L each Sunday is forwarded by 1800L each Tuesday to the Base or other supporting unit controller for transmission by AUTODIN to HQ USAF (AFADS). Negative reports are not required.

6. *Instructions for Aircrew and Operations Officers.* All flight information and classification will be filled out by the pilot and checked by the operations officer if available. Detailed instructions for proper completion of AF Form 121 are:

a. *Type Card (column 1).* Enter A in all cases for original entry.

b. *Date (columns 2-7).* The last two digits of the year will be indicated (67; 68). The month will be indicated numerically (01; 11). The day will be indicated with two numbers (01; 18).

c. *Supersonic Flight Route (columns 8-59).* The sonic or supersonic portions of the flight will be identified by times (Z) and coordinates (North and West) for the start, each turning point, or points no greater than 400 nautical miles apart, and the termi-

nation. If the length of the flight is such that it requires the use of additional lines, the last entry on the preceding line will be entered to "START" the next line and additional entries made as required until the flight terminates; other information need not be entered. Supersonic legs following an intervening subsonic leg or supersonic activity extending past 2400Z will be entered as separate flights. For those flights involving extensive supersonic activity the route can be canned prior to flight so that the aircrew need enter only the applicable times. When supersonic air combat tactics (ACT) are engaged in, outline the approximate area of supersonic activity with a minimum of three coordinates using both start and end coordinates and turning points as required. In this case enter the normal start time; the time at which supersonic flight is terminated will be entered in the time space for each turning/termination point. Supersonic flight over water need show only that portion of the flight within 50 nm of the nearest shoreline.

d. *Mach Number (columns 60-61)*. Mach number maintained throughout the major portion of each line entry will be entered (1.2; 3.0).

e. *Altitude (columns 62-63)*. Altitude maintained throughout the supersonic cruise portion of each line entry will be entered in thousands of feet (01, 35, 60). If supersonic flight is on a dive recovery or air combat tactic (ACT), lowest supersonic altitude will be entered.

f. *Aircraft Type (columns 64-69)*. Aircraft type will be entered utilizing available blocks as necessary (RF 101B, SR-71). Two spaces are provided for model, three for design, and one for series.

g. *Aircraft Serial Number (columns 70-75)*. Complete aircraft serial number.

h. *Installation Code* (columns 76-79). Leave blank. To be entered by the Key Punch facility.

i. *Classification* (column 80). Classification will be entered as S (Secret) C (Confidential) or U (Unclassified), as appropriate.

7. *Correction Procedures*: If a correction is required after submission of the original punched cards to HQ USAF then:

a. Enter a "D" (delete) in column 1 and recopy the data from columns 2 thru 11 and 64 thru 79. Leave remaining columns blank.

b. Enter an "A" in column 1 and enter correct data.

c. Submit both lines to HQ USAF.

NOTE: To delete an original entry submit a "D" card only.

8. *Processing and Transmitting Instructions*. The handwritten AF Form 121 will be keypunched by the operations function if the organic capability exists. Where no operations keypunch capability exists, the base data automation office will perform the keypunching. Cards will be taken to Data Automation as prescribe in paragraph 10 and 80/80 proof listings will be run so that operations personnel may perform visual audits. When all errors have been corrected, cards will be transmitted by Data Automation. Key punch formats and transmittal instructions are contained in AFM 171-12, vol IV, part 23. The punched card decks are classified according to AFR 205-1 when they contain information requiring security classification.

9. *Recording Supersonic Flights*. Commanders will insure that all supersonic flight by aircraft of their organizations is recorded on AF Form 121 so that

the data which is transmitted to HQ USAF will accurately reflect all supersonic activity for the period covered. Supersonic activity for aircraft away from home station will be recorded by Base Operations of the host base for inclusion in their submission of punched cards to HQ USAF. In this case, the transient flight will reflect the Base Installation code of the host base.

10. *Sonic Boom Complaints.* Upon receipt of a damage complaint or claim within the continental limits of the United States, the Base Staff Judge Advocate will complete AF Form 128, "Sonic Boom Inquiry," and forward it to Data Automation which will enter the applicable Installation Code before forwarding it by AUTODIN to HQ USAF. All inquiries will be identified by an "R" under type card (column 1). All AF Forms 128 will be accumulated and submitted by 1800L (as of 2400L Sunday) each Tuesday.

11. *Sonic Boom Inquiry Response.* A Sonic Boom Inquiry response, obtained from the central computer, and containing information as to possible USAF activity causing the disturbance will be forwarded in duplicate to the inquiring office by HQ USAF (AFJALD). The requesting Staff Judge Advocate will then replot the suspect supersonic flight paths to determine the possibility of Air Force involvement. In order to positively deny or confirm possible Air Force involvement, time must be allowed for the repository to receive and catalogue all Sonic Boom Logs for the week in question.

12. *Maintaining AF Form 121.* Sonic boom logs will be maintained for a minimum of 30 months and then destroyed according to AFM 181-5.

13. *Keeping Pilots Informed.* Copies of this regulation and of any directive, standard operating proce-

dure, or other announcement dealing with efforts to carry out its purpose must be made a permanent part of all pilot information files.

14. *Keeping the Public Informed.* An understanding of the importance of flight operations to the overall efficiency of the Air Force can help reduce adverse public reaction to the annoyances created by these activities. Commanders can further this understanding by stressing in their information services programs the value of the various flight operations at their bases. These programs should also explain the measures taken to hold to a minimum any disturbances to the neighboring civilian communities.

BY ORDER OF THE SECRETARY OF THE AIR FORCE

OFFICIAL

J. P. McCONNELL
General, USAF
Chief of Staff

R. J. PUGH
Colonel, USAF
Director of Administrative Services

